

REMARKS

The Office Action and the cited and applied reference have been carefully reviewed. Claims 9-12, 14 and 15 are allowed. Claims 1, 4, 7, and 8 are also pending in this application and define patentable subject matter warranting their allowance. Reconsideration and allowance are hereby respectfully solicited.

Claims 1, 4, 7, and 8 are rejected under 35 U.S.C. §102(b) and 102(e)(2) as being anticipated by Tawashi, U.S. Patent 5,648,101. The examiner acknowledges that the osmotic pump delivery disclosure in Tawashi is cited as occurring over time periods such as one week or four weeks. However, in response to applicants' argument that such time periods are sustained or persistent release of NO, the examiner states that applicants have not pointed to any definition of NO release time period which limits the instant claims regarding what is meant by transient. The examiner takes the position that such time periods of one to four weeks in Tawashi are transient due to being limited in length and thus anticipates the instantly claimed invention. This rejection is respectfully traversed.

Claims 1, 4, 7, and 8 are now amended to recite that the transient increase in permeability of the blood brain barrier is for a short duration, just sufficient for delivery of a therapeutic or diagnostic compound across the blood brain

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barrier, as fully supported by the specification on page 16, lines 1-5. While this "short" time period/duration which is transient/temporary is not defined in the instant specification by an absolute number, it would be well understood by those of skill in the art that the further definition provided in the specification of "just sufficient for delivery of the therapeutic or diagnostic compound across the blood brain barrier" distinguishes this short transient time period/duration from the one week to 4 week time periods disclosed in Tawashi by at least an order of magnitude, if not more. Accordingly, Tawashi simply cannot anticipate the presently claimed invention.

Reconsideration and withdrawal of the rejection are therefore respectfully requested.

The amendments to claims 1, 4, 7, and 8 are being made because the examiner's interpretation of the term "transient" as recited in the present claims was not understood from the previous Office Action. For this reason and the fact that the amendment simply addresses the issue of what time period is considered transient, as raised by the examiner in the outstanding Office Action, applicants request entry and consideration of this amendment after a final rejection.

In view of the above, the claims comply with 35 U.S.C. §112 and define patentable subject matter warranting their


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allowance. Favorable consideration and early allowance are
earnestly urged.

Respectfully submitted,

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By

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